

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

**FLAMINGO LAS VEGAS OPERATING
COMPANY, LLC**

and

**Case 28-CA-077145
28-CA-079092**

**INTERNATIONAL UNION, SECURITY,
POLICE AND FIRE PROFESSIONALS
OF AMERICA (SPFPA)**

and

Case 28-CA-078866

CHRIS RUDY, an Individual

CAESARS ENTERTAINMENT, INC.

Employer

and

Case 28-RC-069491

**INTERNATIONAL UNION, SECURITY,
POLICE AND FIRE PROFESSIONALS
OF AMERICA (SPFPA)**

Petitioner

*Larry A. Smith, Esq., of Las Vegas, Nevada,
for the General Counsel.
John D. McLachlan, Esq. (Fisher & Phillips, LLP)
of San Francisco, California, for the
Respondent and Employer.
David B. Dornak, Esq. (Fisher & Phillips, LLP),
of Las Vegas, Nevada, for the Respondent
and Employer.
Scott A. Brooks, Esq. (Gregory, Moore,
Jeakle & Brooks, P.C.), of Detroit, Michigan,
for the Union.*

DECISION

Statement of the Case

Gerald A. Wacknov, Administrative Law Judge. Pursuant to notice a hearing in this matter was held before me in Las Vegas, Nevada, on July 31, August 1, 2, 3, 21, and 22, 2012.

The charges in Case 28–CA–077145 and Case 28–CA–079092 were filed by International Union, Security, Police and Fire Professionals of America (SPFPA) (Union or Petitioner) on March 22, and April 18, 2012, respectively. The charge in Case 28–CA–078866 was filed by Chris Rudy, an Individual, on April 13, 2012. An Order Consolidating Cases and notice of hearing was issued by the Regional Director for Region 28 of the National Labor Relations Board (Board) on June 15, 2012. The aforementioned charges allege violations by Flamingo Las Vegas Operating Company, LLC (Respondent) of Section 8(a)(1), (3), and (4) of the National Labor Relations Act (the Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

The petition in Case 28–RC–069491 was filed by the Union on November 23, 2011, after prior petitions filed by the Petitioner on November 4, and 17, 2011 were withdrawn. Following a Representation hearing held on December 20, 2011, the Regional Director for Region 28 of the Board issued a Decision and Direction of Election. The election was scheduled for January 19, 2012, but was postponed on January 17, 2012, pending the investigation and disposition of an unfair labor practice charge in a related case, Case 28–CA–069588.¹ On March 16, 2012, the Union filed a request to proceed with the election and an election was held on March 29, 2012.² The tally of ballots shows that there were approximately 123 eligible voters, that 46 votes were cast for the Petitioner, that 64 votes were cast against the Petitioner, that 2 ballots were challenged, and that the challenges were not sufficient in number to affect the results of the election. The Petitioner filed timely objections to the election. On May 16, 2012, the Regional Director issued an order directing hearing on objections. The hearing on objections has been consolidated with the unfair labor practice matters for determination.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the Acting General Counsel (the General Counsel), counsel for the Respondent, and counsel for the Union/Petitioner. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following

Findings of Fact

I. Jurisdiction

The Employer, Caesars Entertainment, Inc., is the Respondent's parent corporation. The Respondent is a limited liability company with an office and place of business in Las Vegas, Nevada, where it is engaged in the operation of a hotel and casino. In the course and conduct of its business operations the Respondent annually derives gross revenues in excess of \$500,000, and purchases and receives goods at the Respondent's Nevada facility valued in excess of \$50,000 directly from points outside the State of Nevada. It is admitted and I find that both the Employer and the Respondent are, and at all material times have been, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

¹ This case is currently pending before the Board following an unfair labor practice hearing on March 13–16, 2012, before Administrative Law Judge Gregory Meyerson, and a decision issued by Judge Meyerson dated June 25, 2012.

² The collective-bargaining unit consists of all full-time and regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act employed by Caesars Entertainment, Inc., at its Flamingo, O'Sheas, and Bill's Gambling Hall facilities in Las Vegas.

II. The Labor Organization Involved

.5 It is admitted, and I find, that the Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

A. Issues

10 The principal issues are whether the Respondent, during the course of a union organizational campaign among its security officers, violated Section 8(a)(1), (3), and (4) of the Act by suspending and discharging employees because of their union activity, and by
15 threatening employees with various repercussions if they selected the Union as their collective-bargaining representative.

B. Facts and Analysis

20 The Union has been engaged in organizing efforts among the Respondent's security officers who perform duties at several adjacent properties owned and operated by the Respondent or the Respondent's parent company, Caesars Entertainment, Inc. As noted, the Union/Petitioner filed a representation petition on November 23, 2011, and an election was held on March 29, 2012.

30 On October 14, 2011, during the organizational campaign but prior to the filing of a representation petition by the Union, the Respondent's security director, Eric Golebiewski, held a preshift meeting with a group of some seven or eight security officers before they were scheduled to go on duty that night on the graveyard shift. The meeting lasted some 4 hours because of the give-and-take at the meeting, during which Golebiewski and the Union's chief
35 proponent, Officer Francis Bizzarro, spoke back and forth "the majority of the time" as Bizzarro presented his concerns and advocated the need for union representation. The meeting came to be referenced by both the Respondent and the employees as the "four-hour meeting." While certain remarks made at this meeting by Golebiewski are the subject of the aforementioned unfair labor practice matter currently pending before the Board, and are not alleged herein as
40 being violative of the Act, these remarks, *infra*, are germane to this matter as background.

Bizzarro, a current employee, testified that he contacted the Union, obtained authorization cards, literature, and brochures, and began passing these items out to other security officers on the graveyard shift. He gave some cards to Officer Thomas Willequer, who
45 also, according to Bazzarro, helped him distribute these materials to security officers at Bills Gambling Hall, an adjacent casino also operated by the Respondent or the Respondent's parent company. Bizzarro testified that while a number of other security officers assisted him in union organizing, he was the main person the unit employees would approach if they had questions about authorization cards. Shortly after he began passing out the cards, a flyer appeared with a photo of one of the cards, urging the employees not to sign it.

Bizzarro testified that during the aforementioned 4-hour meeting, "we went back and forth with . . . heated discussion" about management, the officers and the Union. During the course of the discussion Golebiewski said to three of the security officers present, namely, Thomas Willequer, Brian Meadows, and Steve Fox,

. . . that if a union came in that he wouldn't be able to bend the rules for them, that with the union present, that there would be no flexibility and everything would be by the book and he wouldn't be able to use any of his influence to keep from terminating some of the officers. He pointed at Brian and Thomas and Steven and said that they would be gone had it not been for him stepping in and essentially saving their jobs and if a union was present, he wouldn't be able to do that.

* * *

. . . that Thomas [Willequer] had violations, company violations that would have ended, would have resulted in his termination had he not given him a more than a second or third chance and Brian Meadows had been ill and had run out of his FMLA, his vacation, or his sick time, and that Eric [Golebiewski] allowed him to continue to work and extend that, when he should have been terminated for absenteeism and same thing with Steve Fox, due to his health conditions . . . that he would have been terminated, as well.

Golebiewski testified that on October 7, 2011, he first became aware of the union organizing activity and was also advised that Bizzarro was the main organizer for the Union. Golebiewski, during his testimony, denied that he made the aforementioned statements attributed to him by Bizzarro during the 4-hour meeting, and simply answered "no" when asked whether he made "any suggestion to employees that if a union were in the picture in any respect, that [he] would not be able to make exceptions to discipline for them."³ Golebiewski testified that Bizzarro spoke and presented his grievances and viewpoints during some 60 to 70 percent of the meeting, and that, although Golebiewski had no initial intention of holding such a lengthy meeting, he felt obligated to respond to all of the questions and concerns; he did not want to walk out before all the questions were answered as he believed this would give the wrong impression. Golebiewski conducted meetings with other shifts as well during the same week, but other employees did not express the concerns or present the issues that Bizzarro presented, and the other meetings were significantly shorter.

Bizzarro testified that on about April 14, 2012, following the March 29, 2012 election, he was summoned to Golebiewski's office. Security Shift Manager Charles Willis and Security Shift Manager Cedric Johnson were also present. Golebiewski, according to Bizzarro, pointed at him and said that he had received several complaints from security officers that he had been asking them "which way they voted during the vote and that this was a direct violation of the National Labor Relations Board and that I should consider this my warning." Golebiewski said, according to Bizzarro, that the security officers reported that Bizzarro had told them "there was a list and the Union had a list and knew which way they voted." Bizzarro did not respond. Bizzarro asked if there was anything for him to sign, and Golebiewski said no. Bizzarro asked if he could leave and go back to work, and he left the room. The meeting lasted approximately 45 seconds to a minute. Bizzarro was not given a written warning.

³ Bizzarro, a current employee, appeared to be a forthright witness with a detailed recollection of the meeting. Another security officer, Thomas Willequer, who attended the meeting, testified similarly, *infra*. Further, still another security officer, Christian Alberson, during a separate one-on-one conversation with Golebiewski testified that Golebiewski made similar comments during that conversation, *infra*. I credit the testimony of Bizzarro, Willequer, and Alberson over the abbreviated disclaimer of Golebiewski.

Willis testified that after the election three security guards complained to him about Bizzarro, and he, in turn, so advised Golebiewski. Willis testified:

.5 I don't remember the exact set of complaints, but it was generally that they were being asked how they voted and why, if they voted no, why would they vote no, why would they do that to him, because he's trying to protect them and their jobs.

10 Both Golebiewski and Willis testified that Bizzarro was called into the office and told that security officers were complaining about Bizzarro harassing them, during shift times and in work areas, about how they voted in the election. Golebiewski testified that he told Bizzarro, "You can't harass these guys on the casino floor." Willis testified that Golebiewski said, "that if it continued then, we'd be seeking an NLRB complaint against [Bizzarro]."

15 I credit the testimony of Golebiewski and Willis, and do not credit Bizzarro's account of the conversation to the extent it differs from that of Golebiewski and Willis. I find that Bizzarro was not, contrary to the complaint allegation, "disciplined" for engaging in union activity. Nor was Bizzarro told that he would be disciplined if he continued to engage in such conduct. Rather Bizzarro was told that if he continued to engage in the conduct that the Respondent believed was impermissible and about which employees had complained, namely harassing employees
20 about how they voted, then the Respondent would seek a resolution of the matter before the NLRB. I shall dismiss this allegation of the complaint.

30 The complaint alleges that the Respondent disciplined employee Chris Rudy on April 13, 2012, because he engaged in concerted activities on behalf of the Union and gave testimony to the Board in the form of an affidavit and testified at a prior board hearing, held on March 13–16, 2012, in the aforementioned related unfair practice proceeding now pending before the Board.

35 Rudy began working for the Respondent as a security officer on August 2, 2010. There is no record evidence that Rudy engaged in activities on behalf of the Union. Rudy testified before an administrative law judge in the prior proceeding and his affidavit was shared with the Respondent at the hearing.

40 On March 31, 2012, 2 days after the aforementioned March 29, 2011 election, Rudy was on duty inside the doors of one of the Respondent's three adjoining properties, each with separate entrances fronting on Las Vegas Boulevard, also referred to as the "Strip." A patron approached him and advised him that there was a fight on the Strip. Officer Rudy walked outside the doors to investigate, and simultaneously reported on his radio to the dispatcher, Officer Keith Bash, a nonsupervisory security officer, that there was a fight on the Strip. Rudy looked down the sidewalk some 150 feet and observed a group of pedestrians with their backs to him. Rudy testified that the group of people "were looking at something. They had their backs to me, so they were looking at something over there. I couldn't tell what they were looking at."
45 He did nothing further until "about a minute later" when another security officer, Deborah Allen, joined him and the two began walking toward the group of people. They got about halfway there when they heard on the radio that "we needed people to respond immediately to this fight, that we had Officer Starks in the middle of it by herself."⁴

While Rudy was able to see a group of people from his vantage point, he was not able to see any fight taking place; nor was he able to see Starks, as the group of pedestrians who were observing the fight blocked his view. The fight was between two individuals who were scuffling

⁴ The scenario was well documented as a security video, introduced into evidence, captured the event as it transpired.

and had their torsos extended over a railing that separated the sidewalk from the street. Starks, who had called dispatch on her cell phone for assistance as her radio battery had been depleted, was close to the combatants appropriately observing the fight but, in accordance with protocol, was not attempting break it up until additional security officers arrived at the scene. A
 .5 number of security officers, including Rudy, arrived at the same time and broke up the fight.⁵

About an hour after the incident Rudy was called to the office and asked by Security Shift Supervisor Zina Minor why he had not immediately backed up Starks. Rudy said he didn't know Starks was there, and Minor and Rudy disagreed about whether Rudy was in a position to
 10 observe Starks. After further investigation, Rudy was issued a written warning by Minor on April 13, 2012, as follows:

On Saturday March 31st, 2012 Security Dispatch radioed that there was a fight in front of Margaritaville on the west side walk. Officer Starks stated that she was
 15 en route. Upon Starks arriving at the scene, her radio went out and she used her cell phone to call for back up. Officer Bash in dispatch got on the radio and stated that Officer Starks needed back up. During the interview, Officer Rudy stated that a guest came up to him and advised him that there was a fight outside on the west side walk. Officer Rudy is observed [in the video] coming out of
 20 Margaritaville doors, standing on the stairs, and looking down the west side walk towards the altercation.

Full participation in an incident of this nature is needed to provide protection for guest (sic) walking on the side walk as well employees (sic) involved. Maximum involvement of all personnel assisting with the altercation. Expediting the
 30 detainment which helps minimize injuries to both suspects and the employees involved.

Officer was advised that he is to take an active role during incidents including being proactive and physically provide assistance and back up when suspects
 35 are fighting.

Rudy, who had received no prior warnings of any kind, believed the written warning was incorrect and unwarranted and requested in writing on April 13, 2012, that a board of review panel remove the written warning from his file. The board of review process is established by
 40 the Respondent to give employees the opportunity to overturn or modify disciplinary action. The review board met on May 16, 2012. Rudy called Bash, the on-duty dispatcher during the aforementioned incident, and Allen, who had accompanied him to the scene of the fight, as witnesses on his behalf. Rudy was not in the room at the time these individuals appeared before the review board.

45 The review board decided to modify the prior written warning as follows:

Written warning to be reduced to verbal if no other disciplinary action occurs within six months.

Officer Bash, called as a witness by the General Counsel, testified that officers are to "respond" to fights or other misconduct on the public sidewalk in front of the Respondent's properties because, "Fights in front of the Flamingo makes the Flamingo look bad, so we try and

⁵ The scenario was captured by the Respondent's surveillance camera and the video was introduced in evidence in this proceeding.

just, by our presence, hopefully they will break up the fight.” Further, there is an obligation to “observe and report,” that is, according to Bash, “get a good description” of the incident, and report what you observe to dispatch. Finally, with appropriate reinforcement, officers are to “engage,” that is, attempt to physically break up the altercation, but only when there are at least two security officers for each person involved in the fight. I discount Bash’s testimony that Rudy was appropriately “Observing and reporting because he was looking at the group of people milling around and then he was calling over the radio what he saw,” and was not obligated to do more “because all he saw was a group of people milling around. . . .” Thus, Rudy had been advised of a fight by a patron, and when he looked down the sidewalk he observed a group of people who were focused on something. It would have been reasonable for Rudy to assume, under the circumstances, that they were watching a fight in progress. Rudy, however, did not immediately respond and place himself in a position to “observe and report,” that is, to determine whether, in fact, the fight was ongoing and the nature of the fight, for example, how many individuals were involved or the extent of injuries, and other related observations.

On the basis of the foregoing, I find the General Counsel has failed to show by a preponderance of the evidence that the written warning to Rudy was in retaliation for his participation in the Board hearing. The Respondent’s position seems reasonable under the circumstances, namely, as noted in Rudy’s aforementioned written warning, officers are “to take an active role during incidents including being proactive and physically provide assistance and back up when suspects are fighting.” Thus, the Respondent could reasonably conclude that after learning of a fight, simply observing and reporting that you are watching a group of people watching something, without immediately approaching to observe the situation firsthand, was not a sufficiently proactive response. As Bash testified, “by our presence, hopefully they [the participants] will break up the fight.” I shall dismiss this allegation of the complaint.

The complaint alleges that Thomas Willequer was unlawfully terminated on February 21, 2012, in violation of Section 8(a)(1) and (3) of the Act.

Willequer was suspended pending investigation on February 9, 2012, for an incident that happened on February 6, 2012, namely, according to Respondent’s records, “using your personal cell phone while doing a fill resulting in a \$500 variance.”

Willequer began working for the Respondent as a security officer in 2008. Willequer testified that during the union organizing drive he helped pass out union “information” cards and answered officers’ questions about the Union. Apparently, the cards he handed out were not returned to him, as he stated they were to be filled out by the security officers, who would then send them in to the Union to get information. He distributed these cards to some 10 to 15 individuals and talked about the union to many of his co-workers on the night shift. Willequer testified that, “Mostly it was them approaching me throughout the night,” before, during and sometimes after his shift, as “in previous times” employees had voiced their concerns against the Union, and he did not want to disrespect them by “pushing” the Union. His union activity continued for about a month, from late September 2011, until the end of October 2011. During this period there was robust discussion about the Union. Some security officers were outspoken about being for and some were outspoken about being opposed to the Union. At about the end of October 2011, according to Willequer, “Everybody was sick of hearing about the Union, they just wanted to be done with it.” Willequer acknowledged that he was very careful with respect to the union activities he engaged in “to be sure that management didn’t find about them.” His cause for concern was that he was on a final written warning from July 3, 2011, and that made him particularly cautious.

Willequer had received the following disciplinary warnings:

- Documented Coaching on September 11, 2010 for failing to notify supervision of a detainment or arrest he made on the casino floor.
- Written Warning on October 12, 2010 for sitting down in the lounge for an extended period of time talking with guests rather than working his assigned post.
- Final Written Warning on November 21, 2010 for putting himself in harms way by engaging in a melee involving a fight between patrons prior to backup arriving on the scene.
- Final Written Warning on July 3, 2011 for making offensive comments to a guest including profanity and references to the guest's sexual preferences. The warning states, "You admitted at your interview and in your statement that you used profanity and made remarks regarding sexual preference."

Willequer testified that he and Officer Brian Meadows were used as examples by Director of Security Golebiewski at the aforementioned October 14, 2011 4-hour meeting, attended by, according to Willequer, some 7 to 15 security officers. Golebiewski said, according to Willequer, that if the Union "was here" he could not guarantee he would be able to save our jobs or "have a say in it." He went around the room individually asking everybody why would we want the Union. He specifically referenced Willequer's prior write-ups and said "something along the lines of if the Union was in there and the amount of write-ups that I had, he . . . wasn't sure that . . . that he would be able to save my job."

The duties of security officers include insuring the accuracy of chip fills. Chips are electronically ordered from the cashier's cage by the pit boss, placed in a chip rack by the cashier, checked for accuracy by the security officer performing the fill operation, and placed in a see-through container that is videotaped and then delivered by the security officer to the casino table where both the dealer and pit boss sign off on the delivery. Sometimes, according to Willequer, security officers will deliver 30 to 60 chip fills per hour. He acknowledged that the proper count of the chips is "very important to the casino."

The Respondent maintains that Willequer was discharged in accordance with its progressive disciplinary policy, infra, because his chip fill was short and he was on his personal cell phone while on duty in the cage area. When Willequer was first confronted with these accusations during the Respondent's investigation of the matter, he denied both allegations, saying that he had not been on the phone and that he had double-checked the fill count on the chips to make sure it was correct. Later, however, Willequer acknowledged that in fact he had used his cell phone at the cashier's cage and that the rack of chips he delivered to the table was incorrect; thus, there were supposed to be \$1000 in green chips but instead there were \$1500 in green chips. Neither the dealer nor the pit boss caught the mistake.

During the Respondent's investigation of this matter, Willequer furnished his cell phone records which show that he made two phone calls on his cell phone, both to the same individual at Bills Gambling Hall control office. Bills Gambling Hall is another casino adjacent to the Flamingo, and is owned and operated by the Respondent or the Respondent's parent corporation. Some security officers, including Willequer, work at both casinos, and Willequer phoned an individual at Bills Gambling Hall on the night in question to let him know he would be late relieving him for that particular post because he had been busy at the Flamingo and had been unable to take a lunch break; therefore, he would be taking his lunchbreak before reporting for duty at Bills. This was a business call, and not a personal call. Willequer testified he knew it was against policy to use his cell phone instead of his radio for such a call, but did not want to tie up the radio with "personal matters." However, Willequer acknowledged that

similar conversations regarding lunchbreaks or other such matters are conducted by security officers over the radio “all the time.” During the Respondent’s investigation of the matter, Willequer told the investigating labor relations advisor, Elma Padaguan, *infra*, that:

.5 I was thinking about using the radio, but because it’s more personal to talk to someone over the phone instead of using the radio, I didn’t want the other officers to know what’s going on because everyone can hear over the radio. I wanted to have a one-on-one conversation, not 15 to 1 conversation.

10 Willequer testified that although security officers are not permitted to use their cell phones while on duty, he has seen other security officers do this at least three or four times a night, and that in order to avoid being caught,” usually they duck in by the elevator areas to talk . . . trying to hide in certain sections . . . where coverage is the poorest so that they’re not seen on the camera.”

15 Elma Padaguan is the Respondent’s employee labor relations advisor. She conducted an investigation into Willequer’s February 9, 2012 suspension pending investigation (SPI) which is issued to an employee who, as a result of the Respondent’s progressive disciplinary policy, is subject to termination as the next step in the process. She interviewed Willequer on February 20 13, 2012. During the course of the interview, according to Willequer, Padaguan mentioned that the investigative procedure would have been different if a union had represented the security officers.⁶ While Padaguan did not recall making such a statement, she indicated that she might have done so.⁷ Padaguan testified that cell phones are to be used only on breaks in designated break areas, and that Willequer admitted he knew the cell phone policy; however, he didn’t want to use the radio to call Bills dispatch to notify Officer Maranucci that he would be late in relieving him because he wanted it to be a one-on-one call. Padaguan, during her investigation, also 30 spoke to Maranucci, who confirmed that Willequer had called to tell him he was running late to break him at Bills. As noted above, Willequer submitted cell phone records showing that he had made two calls to Maranucci during his shift.⁸ Padaguan testified that Willequer also admitted that he had signed for and delivered an incorrect fill.

35 Upon completing her investigation, and reviewing Willequer’s personnel file, including the aforementioned disciplinary warnings issued to Willequer, Padaguan reached the conclusion he should be terminated. She made her recommendation to Golebiewski, who concurred. Padaguan testified she did not know whether Willequer had supported the Union.⁹

40 As noted above, Willequer acknowledged that he was very careful with respect to the union activities he engaged in “to be sure that management didn’t find about them,” because of the fact that he had been issued a previous final written warning. There is no evidence that the

45 ⁶ In this regard, Willequer’s affidavit states: “During this conversation, the representative did mention something about the fact that if security guards had been represented by a union, that I would have had a union representative present for the interview and that the process would be a whole different process.”

⁷ Padaguan’s extensive notes of her interview with Willequer show that at the end of the interview she told him he would be remaining under suspension until a decision had been made, and “I explained the Board of Review process to Thomas. He said that he did not know about this and no one had ever explained this to him. Now he knows.” There is no evidence that Willequer appealed his discharge by asking for a Board of Review determination.

⁸ The record does not contain information regarding the nature of the first call, or why Willequer called Maranucci twice.

⁹ Padaguan appeared to be a credible witness.

Respondent was aware of his union activity prior to his discharge. He apparently discontinued such union activities in late October 2011, and from that time until his discharge, over 3 months later, he refrained from engaging in union activity. The General Counsel maintains that the fact that both Bazzarro, whom Golebiewski knew to be the chief union adherent, and Willequer were present at the October 14, 2011 4-hour meeting and that Golebiewski singled out Willequer, among others, as an example of his lenient policy in protecting the jobs of security officers,¹⁰ is evidence of Golebiewski's knowledge or suspicion that Willequer, too, was a union adherent. There is no evidence to support this supposition. Rather, Willequer was present at the meeting because he happened to be on the same shift as Bazzarro and, insofar as the record shows, was simply singled out by Golebiewski as a convenient example rather than because Golebiewski believed him to be a union adherent. I shall dismiss this allegation of the complaint.

The complaint alleges and the General Counsel argues that the Respondent committed various 8(a)(1) violations during a one-on-one meeting between Officer Christian Alberson and Golebiewski on or about October 27, 2011.

Alberson was employed as a security officer by the Respondent from September 11, 1998, until his discharge on November 17, 2011. His discharge is not in question. Alberson testified that Golebiewski called him in his office as Alberson happened to be walking past one day,¹¹ asked him to sit down, offered him a "Monster" energy drink, asked Alberson about his kids and then began talking about the Union. He said he didn't think it was a smart idea "for you guys to do it." He said he couldn't speak directly about the Union but he wanted to express his concerns. He told Alberson to read all the "paperwork" from whoever was distributing the materials, and "think about everything." He told Alberson to think about what happened at Caesars Palace across the street and said, "Look at the dealers that were over there. They got a freeze in pay for four years and they haven't gotten a raise . . . do you want that?" Alberson said no. Golebiewski said that he had brought him back to work after his suspension and "I just want you to know, if you guys go union, I can't protect you like I'm protecting you now . . . you'll be unsafe and I won't be able to take care of you at that point." He again asked, "Do you want that?" Alberson said no. Golebiewski repeated that Alberson should read everything because "he wants the best interests for us and he doesn't want anything bad to happen to us if we go union." Then they spoke about "life and family and stuff like that."

Golebiewski denied that this conversation ever occurred.

I credit the testimony of Alberson, who appeared to be a credible witness with a vivid recollection of the conversation. Alberson's testimony is consistent with the testimony of other employees who testified to similar comments by Golebiewski at the 4-hour meeting. Moreover, I have previously discredited Golebiewski's testimony that he made no such comments at the 4-hour meeting.

I find that Golebiewski's warnings about a freeze in pay, his inability to afford employees protection from suspensions or discharges, and other similar unspecified adverse

¹⁰ There is no complaint allegation that Golebiewski, and thereby the Respondent, changed his leniency policy vis-à-vis Willequer in order to influence the result of the upcoming election.

¹¹ While the date of the conversation is uncertain, it is clear that, if in fact there was such a conversation, it occurred after October 7, 2011, when Golebiewski first found out about the Union. Accordingly, it occurred within the Section 10(b) period and is not time-barred, as contended by the Respondent.

consequences resulting from selecting the Union as the employees' collective-bargaining representative, is violative of Section 8(a)(1) of the Act as alleged.¹²

IV. The Election Objections

As noted, the petition in Case 28–RC–069491 was filed by the Union on November 23, 2011, after prior petitions filed by the Petitioner on November 4, and 17, 2011, were withdrawn. The election was held on March 29, 2012, and the Petitioner filed timely objections to the election. Many of the election objections track the allegations in the instant unfair labor practice proceeding as well as the allegations in the aforementioned unfair labor practice proceeding now pending before the Board on the Respondent's exceptions to the decision of the administrative law judge.

The only alleged unfair labor practice in this proceeding that occurred after the filing of any of the three petitions is the alleged unlawful discharge of Willequer on February 21, 2012. The Petitioner included Willequer's discharge as an election objection. As noted, I have dismissed that allegation of the complaint, and therefore I find that Willequer's discharge does not constitute objectionable conduct.

The Petitioner further objects to the election as follows:

- The Employer offered and/or granted employees breaks to vote while on duty.

Prior to the election, by letter to the Regional Office dated January 4, 2012, the Petitioner objected to the Employer's unilateral decision to permit employees to vote while on duty. The Regional Office deferred this matter to the election objection stage of the proceeding. During the day of the election the employees were permitted to vote any time the polls were open,¹³ either before, during, or after their shift. If they wanted to vote while on duty they were required to radio the dispatcher to obtain permission to leave their post in order to vote. The Petitioner would apparently characterize this procedure as the granting of an extra break. The Petitioner relies upon *Holding Acquisition Co. LP d/b/a Rivers Casino*, 356 NLRB No. 142 (2011), as authority for its objection, maintaining that, as the Board stated in *Rivers Casino*, the extra break constituted an "impermissible impact on employee free choice." The cited case is inapposite. Thus, in *Rivers Casino*, graveyard shift employees were given an extra break to vote in contravention of a prior written agreement between the union and employer, which specified that employees could vote "during working time if on a regularly scheduled break." The Board emphasized its rationale as follows:

Here, where the parties had entered into a well-publicized agreement specifying that employees were to vote during their breaktime, the graveyard-shift employees would have understood that they had been given an extra break on election day solely as a matter of the Employer's beneficence and discretion and that the break was intended to facilitate their voting. Thus, right before the employees cast their ballots, the Employer's action unfairly signaled it[s] authority to grant and thus to take away benefits. . . .

¹² I do not find that Golebiewski's remarks during this conversation also created the impression of surveillance of employees' union activity, as alleged, and I shall dismiss this allegation.

¹³ The official notice of election, posted at the Respondent's premises, states, inter alia, "EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN."

Moreover, in the instant case, the dispatcher(s) who granted employees permission to vote, depending upon whether there was sufficient security coverage to permit them to leave their post, were not supervisors; rather, they were also unit employees eligible to vote. Further, there is no showing that any employee who wanted to vote was unable to do so.

.5

I recommend that this objection be overruled.

The Petitioner further objects to the election as follows:

10

- The Employer's observers wore Employer insignia.

- The Employer's observers wore Employer uniforms.

15

- The table cloth and/or skirt behind which the NLRB Agents and observers sat and employees checked in to vote was adorned with Employer insignia.

20

The Employer's election observers during the three scheduled voting sessions on the day of the election were unit employees. Because they were scheduled to work that day, each wore the customary uniform that security offices are required to wear while on duty, including "Security Officer" patches on the sleeves and fronts of their shirts, bearing the name of the particular casino where they work. The election was conducted in a conference room at the Employer's premises. The table at which the observers and Board agents sat was covered by a dark table cloth, with a Caesars Entertainment logo and the wording "CAESARS ENTERTAINMENT" on the front skirt of the table cloth.

30

The Petitioner maintains that the prominent display of the Employer's name and logo on the table cloth, coupled with the uniforms worn by the Employer's election observers, constituted electioneering at the polling place and, in addition, could impermissibly "lead voters to believe that the Employer was in control of the process, not the NLRB."

35

It was permissible for the observers to wear their customary uniforms. NLRB Casehandling Manual, Part Two, Representation Proceedings, at Section 11310.4, headed "Observer Identification" is as follows:

40

The official badge to be worn by observers is the one provided by the Board. It is preferred, although not required, that no other insignia be worn or exhibited by the observers during their service as observers. This, of course, does not apply to regular employer identification badges, the wearing of which is required by the employer.

45

Further, while it would have been preferable for the Board agent(s) to remove the table cloth or require the Employer to do so in order to preserve, insofar as possible, the neutrality of the voting place, it is highly unlikely that the table cloth would have any effect on the voters' free choice. I recommend that the foregoing objection, singly and collectively, be overruled.

The Petitioner further objects to the election as follows:

- The employer conducted surveillance on employees who supported the Union.

The petitioner maintains that the Employer engaged in surveillance of the protected concerted activities of Officer Bizzarro on several occasions, namely, on November 28, 2011,

and in February 2012.¹⁴ While the record evidence contains emails to and from Respondent's managers regarding Bizzarro's activities or comments, there is no showing that any clandestine surveillance took place. Moreover, there is no evidence that either Bizzarro or any unit employees were aware of the existence of these emails. Regarding the contention that in February 2012, two employees were asked by the Employer to prepare a written statement concerning Bizzarro's prounion activities, the evidence shows that the two employees in question approached supervisors to complain that Bizzarro kept approaching them about the Union. One employee states in his written statement, inter alia, "I don't want to hear about the Union anymore!" The other employee states, inter alia, "After being approached numerous times, I would like these actions to stop."

I recommend that this objection be overruled. There is no evidence that the employees were aware of the emails, and therefore the emails could have had no impact on the election results. The fact that the two complaining employees who approached supervisors with their concerns were asked to submit written supporting statements, would not have reasonably caused them to believe, under the circumstances, that the Employer was keeping Bizzarro's activities under surveillance.

The Petitioner further objects to the election with additional objections that predate the filing of the representation petition, maintaining that certain conduct of the Employer, including the alleged unfair labor practices in the collateral unfair labor practice proceeding, also constitute objectionable conduct. The Board, in *Ideal Electric*, 134 NLRB 1275 (1961), established the policy that the date of the filing of the petition is the cutoff time in considering alleged objectionable conduct. The Petitioner has not demonstrated that the prepetition conduct herein falls within any exception to the *Ideal Electric* policy. See, e.g., *Ron Tirapelli Ford v. NLRB*, 987F.2d 433, 443 (7th Cir. 1993); *Parke Coal Co.*, 219 NLRB 546 (1975). Accordingly, I recommend that the remainder of the Petitioner's objections be overruled.

On the basis of the foregoing, I further recommend that the Petitioner's election objections be overruled in their entirety and that the results of the election be certified.

Conclusions of Law and Recommendations

1. The Respondent and Employer are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent has violated Section 8(a)(1) of the Act as found herein.

The Remedy

Having found that the Respondent has violated and is violating Section 8(a)(1) of the Act, I recommend that the Respondent be required to cease and desist therefrom and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Finally, I shall recommend the posting of an appropriate notice, attached hereto as "Appendix."

¹⁴ While the Petitioner also asserts, as a component of this objection, that Security Director Golebiewski wrote a lengthy memo advising high-level managers of Bizzarro's comments and concerns at the October 14, 2011 4-hour meeting, this conduct by Golebiewski was prepetition. In addition, memorializing the comment of an employee at an open meeting is not "surveillance" as commonly understood.

The Election Objections

It is recommended that the Petitioner's election objections be overruled in their entirety and that the results of the election be certified.

ORDER¹⁵

The Respondent, Flamingo Las Vegas Operating Company, LLC, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Warning or threatening employees regarding a freeze in pay, or the inability to afford them protection from suspensions or discharges, or other unspecified adverse consequences that would result from selecting the Union as the employees' collective-bargaining representative.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the purposes of the Act:

(a) Within 14 days after service by the Region, post at its Las Vegas facilities involved in this matter copies of the attached notice marked "Appendix."¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 28, after being duly signed by Respondent's representative(s), shall be posted immediately upon receipt thereof, and shall remain posted by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

¹⁵ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

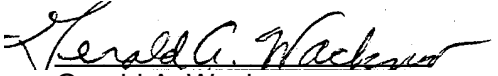
¹⁶ If this Order is enforced by a judgment of the United States Court of Appeals, the wording in the notice reading, "Posted by Order of the National Labor Relations Board," shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Within 21 days after service by the Regional Office, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

.5

Dated: December 18, 2012

10


Gerald A. Wacknov
Administrative Law Judge

15

20

30

35

40

45

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT warn or threaten you with a wage freeze in the event you select the Union as your collective-bargaining representative.

WE WILL NOT warn or threaten you that we will be unable to protect you from suspension or discharge in the event you select the Union as your collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

**FLAMINGO LAS VEGAS
OPERATING COMPANY, LLC**

(Employer)

Dated: _____ By: _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be referred to the Board's office, 600 Las Vegas Boulevard South—Suite 400, Las Vegas, NV 89101-6637, Phone 702-388-6416.